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TOWNSHIP—WASTE DISPOSAL DISTRICT—SECTION 505.28  
R. C.—TRUSTEES—MAY NOT EXPEND GENERAL FUNDS  
FOR SERVICE—LIMITED TO FUNDS RAISED BY TAX LEVY  
OR RENT CHARGED—SECTION 505.29, R. C.

## SYLLABUS:

Section 505.27, et seq., Revised Code, Section 3295-1, et seq., General Code, does not authorize a board of township trustees to expend general township funds for the purpose of providing and maintaining waste disposal service in a waste disposal district established as provided in Section 505.28, Revised Code, the board's expenditures for such purpose being limited to funds raised by levying a sufficient tax therefor upon the taxable property in such district, or by charging rent as provided in Section 505.29, Revised Code.

Columbus, Ohio, August 16, 1956

Hon. Ray Bradford, Prosecuting Attorney  
Clermont County, Batavia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 505.27 et seq. of the Revised Code provides for the creation and maintenance of a waste disposal district.

“Township A is composed mainly of unincorporated area, with less than one-seventh of the township residential tracts being in an incorporated area. The trustees of said township have sufficient monies in the general fund of the township, derived from general tax levies and from receipts from inheritance taxes, to enter into a contract for a waste disposal service to a waste disposal district that would coincide with the township lines, excluding that part of the area which is part of an incorporated village. May they so expend monies from this general fund for such a purpose, or are they limited to maintaining the district under the provisions of Section 505.29 of the Revised Code?”

At the onset, it should be noted that township trustees are quite limited in their authority. 39 Ohio Jurisprudence, at page 306, states:

“Township trustees, who act in a judicial as well as a minis-

terial capacity in certain instances, possess only such powers as are expressly conferred upon them by statute \* \* \*.”

Thus, it appears that township trustees only have such authority as the legislature has granted to them.

The sections to which you refer were originally embodied in an Act of the General Assembly passed April 28, 1943, embracing Sections 3295-1 to 3295-7, inclusive, of the General Code. They are now codified as Sections 502.27 to 505.33, inclusive, of the Revised Code.

Township trustees have been authorized by Section 505.27, et seq., Revised Code, to create a waste disposal district. Section 505.27, Revised Code, provides:

“Boards of township trustees, either severally or jointly, may enter into written contracts with the proper municipal or county authorities or with independent contractors for the collection and disposal of garbage and refuse in any part of the township territory created into a waste disposal district as provided in section 505.28 of the Revised Code.”

The Uniform Tax Levy Law is found in Section 5705.01 et seq., and states in Division (A) of Section 5705.01, Revised Code:

“‘Subdivision’ means any county, municipal corporation, township, township fire district, *township waste disposal district*, or school district, except the county school district.”  
(Emphasis added.)

Division (C) of this section provides, in part:

“‘Taxing authority’ of (or) ‘bond issuing authority’ means, \* \* \* in the case of a township, the board of township trustees; and in the case of a township fire district or *township waste disposal district*, the board of township trustees of the township in which such district is located.”  
(Emphasis added.)

Division (H) of this section states:

“‘Taxing unit’ means any subdivision or other governmental district having authority to levy taxes on the property in such district, or issue bonds which constitute a charge against the property of such district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and *other districts*.”  
(Emphasis added.)

It thus appears from the subsections of Section 5705.01, Revised Code,

cited *supra*, that once a waste disposal district is created pursuant to Section 505.27 et seq., such a district is a separate, independent "subdivision" and "taxing unit." The board of township trustees of a waste disposal district are the "taxing authority" of such waste disposal district.

By enacting Section 505.27, et seq., the legislature has specifically provided for the financing and maintaining of waste disposal districts. Section 505.29, Revised Code, states :

"The board of township trustees *may*, in any year, levy a sufficient tax within the ten-mill limitation, upon all *taxable property in a waste disposal district* to provide and maintain waste disposal service.

"*In the alternative* the board of any township which has contracted for the collection or disposal of garbage or refuse on behalf of any district *may*, by resolution, establish equitable charges of rents to be paid such township, for the use and benefit of such service, by every person, firm, or corporation whose premises are so served. Such charges shall constitute a lien upon the property served, and, if not paid when due, shall be collected in the same manner as other township taxes."

In Opinion No. 2855, Opinions of the Attorney General for 1948, it was stated at page 113, in the syllabus :

"The cost of providing and maintaining waste disposal service in a township territory which has been formed into a waste disposal district in accordance with the terms of Section 3295-1 et seq., General Code, may, in the discretion of the township trustees be met by a tax levied on all taxable property in such district, or by a service charge for such waste disposal service which service charge may however be made only against the persons availing themselves of the service offered."

This opinion, rendered by the then Attorney General, noted that under Section 3295-3, General Code, which is now Section 505.29, Revised Code, there were two alternative methods whereby waste disposal districts could be maintained. One is taxing all property ; the other is charging rates on property which has been served.

In Opinion No. 3622, Opinions of the Attorney General for 1954, at page 118, I dealt with Section 505.27, et seq., and said :

"It seems to me quite plain that the General Assembly, in granting authority to township trustees to provide for garbage and refuse disposal by contract, intended to limit their authority

strictly to the power granted. It may be observed in this connection, that the General Assembly in the matter of authorization of public improvements by the subdivisions under its control, has often limited them to carrying out designated powers only by contracts. \* \* \* These restrictions are based upon considerations of public policy which, wise or unwise, are solely within the discretion of the legislature.”

Township trustees, in their capacity as the governing body of the *township*, should be distinguished from the same board of township trustees in their capacity as the governing body of a waste disposal district. In the former capacity they operate within their sphere of delegated duties as the governing agency of the township proper, while in the latter they are restricted to their explicit powers as granted by Section 505.27, et seq., Revised Code.

It should be noted also that the funds of a waste disposal district are not the same as general township funds, but are, quite to the contrary, funds of a “subdivision” and an independent “taxing unit.” To allow township trustees to draw upon general township funds would be to enable them to create a method of supporting a waste disposal district that the legislature did not authorize.

Section 5822 of Sutherland Statutory Construction, Vol. 3, states at pages 117-118:

“The rule of *expressio unius exclusio alterius est* may be used advantageously in some cases in determining whether a statute should be construed as mandatory or permissive. As applied in this connection the rule is that if a statute provides one thing, a negative of all others is implied. Where a statute granted authority to do a thing and prescribe the manner of doing it, the rule was clearly set out that the provision as to the manner of doing the thing was mandatory, even though the doing of it in this first place was discretionary.”

Thus, when township trustees desire to create a waste disposal district, the legislature has provided for the financing of such district by either of two alternative methods and any extension of powers to township trustees to expend general funds for such a purpose must come from the legislature.

It is my answer, then, to your request, that Section 505.27, et seq., Revised Code, Section 3295-1, et seq., General Code, does not authorize

a board of township trustees to expend general township funds for the purpose of providing and maintaining waste disposal service in a waste disposal district established as provided in Section 505.28, Revised Code, the board's expenditures for such purpose being limited to funds raised by levying a sufficient tax therefor upon the taxable property in such district, or by charging rent as provided in Section 505.29, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General